

Internal Revenue Service

Number: **200950032**
Release Date: 12/11/2009
Index Number: 664.03-01

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B02
PLR-126190-09
Date: September 1, 2009

Trust =

Trustee =

A =

B =

d1 =

d2 =

d3 =

d4 =

Date =

t =

u =

v =

w =

x =

y =

z =

Court =

Dear :

This responds to a letter dated May 20, 2009, and supplemental correspondence submitted by the authorized representative of Trust requesting a ruling that a proposed modification of Trust will not disqualify Trust as a charitable remainder annuity trust (CRAT) under § 664 of the Internal Revenue Code. The Service previously issued a favorable ruling in PLR 200617026 (“previous PLR”) that a proposed modification of Trust would not disqualify Trust as a CRAT.

A established Trust as a CRAT on d1. Trustee is the trustee and the charitable remainder beneficiary of Trust. Trust’s governing instrument requires Trustee to pay A, during A’s lifetime, an annuity of t dollars annually. Upon the death of A, Trustee is required to pay the same annuity to A’s son, B. Trust’s governing document also provides that upon the death of both A and B, Trustee is to distribute all the principal and income of Trust to itself, as the charitable remainder beneficiary. A died on d2, and B is the current annuity recipient.

To better meet the demands of its scholarship program, Trustee, with B’s consent, proposes to reform the terms of Trust to permit Trustee to make additional limited annual distributions of principal to itself as the charitable beneficiary of Trust. Trustee proposes to value the assets of Trust as of Date each year. To the extent that the market value of assets of Trust exceeds w dollars as of Date, the Trustee would distribute a maximum of x dollars over of the excess over w dollars to itself to be used by Trustee’s scholarship program. If the market value of assets of Trust exceeds y dollars as of Date, Trustee would distribute up to an additional x dollars of the excess over y dollars to itself. The maximum amount that could be distributed to Trustee in any year under the modification would be z dollars, to be used by Trustee in awarding scholarships in its scholarship program. If the value of the Trust property were w dollars or less as of Date, Trustee would make no distribution of principal to Trustee, but continue to pay the annuity to B. It has been represented that the initial net fair market value of the assets of Trust was u dollars, and that as of d3, the net fair market value has increased to v dollars.

By an order dated d4, Court has approved the modification of Trust to allow the limited distributions to the charitable beneficiary described above, effective upon the receipt of a private letter ruling from the Internal Revenue Service that the modification of Trust will not disqualify Trust as a CRAT under § 664. Upon receipt of a favorable

ruling request, Trustee will seek a revised order incorporating the letter ruling into the Court's findings and will ask the Court to further modify Trust to conform it with § 1.664-2(a)(4) so that the terms of Trust will require the adjusted basis of assets distributed by the Trustee in kind to be fairly representative of the adjusted basis of the assets available for distribution as of the distribution date.

Section 664(d)(1) of the Code sets forth the requirements for a trust to be a charitable remainder annuity trust. Section 664(d)(1)(A) provides that a sum certain (which is not less than 5 percent nor more than 50 percent of the initial net fair market value of all property placed in trust) is to be paid, not less often than annually, to one or more persons (at least one of which is not an organization described in § 170(c) and, in the case of individuals, only to an individual who is living at the time of the creation of the trust) for a term of years (not in excess of 20 years) or for the life or lives of such individual or individuals. Section 664(d)(1)(B) provides that no amount other than the payments described in § 664(d)(1)(A) and other than gratuitous transfers described in § 664(d)(1)(C) may be paid to or for the use of any person other than an organization described in § 170(c).

Section 1.664-2(a)(1)(i) of the Income Tax Regulations provides that, in general, the governing instrument of a CRAT must provide that the trust will pay a sum certain not less than annually to a person or persons described in § 1.664-2(a)(3) for each taxable year of the period specified in § 1.664-2(a)(5).

Section 1.664-2(a)(3)(i) provides, in part, that the amount described in § 1.664-2(a)(1) must be payable to or for the use of a named person or persons, at least one of which is not an organization described in § 170(c).

Section 1.664-2(a)(4) provides, in part, that no amount other than the amount described in § 1.664-2(a)(1) may be paid to or for the use of any person other than an organization described in § 170(c). The trust may not be subject to a power to invade, alter, amend, or revoke for the beneficial use of a person other than an organization described in § 170(c). The governing instrument may provide that any amount other than the amount described in § 1.664-2(a)(1) shall be paid (or may be paid in the discretion of the trustee) to an organization described in § 170(c) provided that, in the case of distributions in kind, the adjusted basis of the property distributed is fairly representative of the adjusted basis of the property available for payment on the date of payment. The governing instrument may also provide that a portion of the trust assets may be distributed currently, or upon the death of one or more recipients, to an organization described in § 170(c).

Section 1.664-1(e)(1) provides that an amount distributed by a charitable remainder trust to an organization described in § 170(c) other than the annuity or unitrust amount shall be considered as a distribution of corpus and of those categories of income specified in § 1.664-1(d)(1) in an order inverse to that described in § 1.664-

1(d)(1). The character of such amounts shall be determined as of the end of the taxable year of the trust in which the distribution is made after the character of the annuity or unitrust amount has been determined.

Based solely on the facts and representations submitted, we rule that the proposed modification of Trust discussed above will not disqualify Trust as a CRAT under § 664.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of the facts described above under any other provision of the Code, including whether Trust was or is a CRAT under § 664 of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to Trust's authorized representative.

Sincerely,

Melissa C. Liquerman
Branch Chief, Branch 2
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes